U.S. Department of Labor

Office of Administrative Law Judges
50 Fremont Street - Suite 2100
San Francisco, CA 94105

(415) 744-6577
(415) 744-6569 (FAX)

Issue Date: 13 August 2004

CASE NO.: 2003-LHC-02209

OWCP NO.: 14-083719

In the Matter of:

DARRELL R. GRENZ,
Claimant,

v.

NORTHWEST MARINE IRON WORKS,
Employer,

and

SAIF CORPORATION,
Carrier.

Appearances:

George J. Wall, Esq.
for Claimant

Jill B. Gragg,
for Employer and Carrier

Before: Gerald Michael Etchingham
Administrative Law Judge

DECISION AND ORDER AWARDING MEDICAL BENEFITS AND ATTORNEY FEES

Claimant Darrell R. Grenz ("Claimant") filed a claim against Northwest Marine Iron Works/SAIF Corporation ("Employer") for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq*. (the "Act"), for medical benefits after the May 18, 2001 under Section 7 of the Act. He argues that his need for medical treatment was related to his pre-existing chondromalacia patella of the right knee.

On December 8, 2003, the parties appeared before me through their attorneys in Portland, Oregon. All parties were represented by counsel. The parties stipulated that Claimant's live testimony would not be taken as Claimant's related claim against Cascade General, Inc./Liberty NW Insurance Co. ("Employer2") for benefits concerning an alleged work-related right thigh slag burn injury (OALJ #2003-LHC-127; OWCP #14-133311) had been heard by me on July 21, 2003 in Portland, Oregon. I decided that case by decision and order issued February 13, 2004 denying benefits (the "Grenz 1 Decision"), a true and correct copy of which has been offered into evidence as Claimant's Exhibit ("CX") 19. ALJX 2 at 1. In my Grenz 1 Decision, I found that there was no causal relationship between Claimant's May 2000 right thigh slag burn and his right knee problems after May 18, 2001. CX 19.

The following exhibits were admitted into evidence: CXs 1-18; Employer's Exhibits ("EX") 1-45; and Administrative Law Judge's Exhibits ("ALJX") 1-2, consisting of the closing briefs of Claimant and Employer , respectively, filed April 2, 2004, thereby closing the record. It was also agreed by the parties that the record would be left open for Employer to submit its EX 46 and 47 comprised of Employer independent medical evaluator ("IME") Dr. Jon Vessely's undated curriculum vitae and his deposition transcript dated January 21, 2004, respectively.

I admit Claimant's exhibits 1-19 and Employer's Exhibits 1-47 into evidence without objection from opposing parties. In addition, I take administrative notice of my earlier decision and order (CX 19) and incorporate it by reference into this decision and order as the Claimant's testimony from hearing on July 21, 2003 is relevant to this action as are my prior findings and conclusions of law. I duly considered the evidence submitted in this case, the admitted exhibits, and the briefs and arguments of counsel.

STIPULATIONS

The parties have stipulated to the following:

a. The Act applies in this case.
b. This is solely a claim for Section 7 medical benefits and related expenses incurred after May 18, 2001.
c. An employer-employee relationship existed between Claimant and Employer beginning in 1978 and when Claimant developed bilateral chondromalacia patella as of January 1986.
d. A right lateral patellar release surgery was performed by Dr. Noall on July 14, 1987 for the condition of chondromalacia patella.
e. A slag burn injury occurred to Claimant's right thigh in May 2000 which arose out of and in the course of Claimant's different employment with Employer2.
f. Employer is not currently providing medical benefits.

CX 19 at 57-59; ALJX 1 at 5; ALJX 2 at 2 and 5. Because there is substantial evidence in the record to support the foregoing stipulations, I accept them.

ISSUE FOR DETERMINATION

The unresolved issue in this proceeding is:

1. Whether there is any causal relationship between Claimant's right knee pain after May 18, 2001 and his January 1986 chondromalacia patella and subsequent July 14, 1987 right release surgery such that Claimant is entitled to reimbursement under Section 7 of the Act for his medical treatment for his right knee injury?

SUMMARY OF CONCLUSIONS

Claimant's request for medical benefits after May 18, 2001 is granted through August 29, 2002. The record contains credible evidence to establish a causal connection between Claimant's January 1986 right chondromalacia and his right knee pain from May 19, 2001 through August 29, 2002, the date Claimant previously argued that he reached maximum medical improvement and was ready to return to work in an unrestricted capacity. CX 19 at 56. The opinions of Drs. Fuller, and Schilperoort, as well as the opinion of treating physician Dr. Noall as expressed in March 2001 and February 2003, are credited over the changed opinion of Dr. Noall in June 2003 and Employer's IME Dr. Vessely with respect to the causal connection between Claimant's work-related 1987 right knee injury and his right knee pain from May 19, 2001 through August 29, 2002.

FINDINGS OF FACT

General Background

Claimant worked as a welder in the shipyards for Employer beginning in 1978. CX 1; EX 3 at 3. Claimant later became a boilermaker. *Id.*

Claimant filed, and Employer accepted on January 6, 1986, a claim for a right knee injury---specifically, bilateral chondromalacia---occurring as a result of his crawling around numerous staging areas where he worked. CX 19 at 57; EX 1 at 1; EX 15 at 22; EX 19 at 28;.

Claimant's initial treating orthopedist, Michael R. Marble, M.D., began treating Claimant on January 24, 1986 and also diagnosed bilateral chondromalacia. EX 3 at 3. Dr. Marble was concerned about the reliability of the patient and whether he would do well with any aggressive treatment. Dr. Marble predicted that Claimant would not do well with aggressive treatment, and therefore elected to discontinue care for Claimant. CX 19 at 57.

Subsequently, Claimant saw Dr. David L. Noall, another orthopedist, on March 13, 1986. Dr. Noall issued a second opinion diagnosing Claimant with bilateral chondromalacia of the patella. Dr. Noall performed the first surgery on Claimant's left knee on September 10, 1986, consisting of arthroscopy and a lateral retinacular release. Postoperatively, Claimant continued to have problems with both knees. CX 1-4; CX 19 at 57; EX 11 at 12; EX 13 at 17.

Dr. Noall performed surgery on Claimant's right knee on July 14, 1987, including a lateral retinacular release. CX 4-5; CX 19 at 57; EX 14 at 18.

On January 28, 1988, Claimant underwent an independent medical evaluation ("IME") with Theodore J. Pasquesi, M.D., who subsequently opined that Claimant was at maximum medical improvement but should avoid kneeling, and should not be "on his feet" over 8 hours a day. Dr. Pasquesi further opined that Claimant suffered a 5% and 10% impairment of the left lower extremity and right lower extremity, respectively. CX 19 at 57-58; EX 15 at 22; EX 19 at 28.

On February 29, 1988, Claimant saw Dr. Noall and reported ongoing symptoms. Dr. Noall opined that Claimant had not suffered any aggravation of his knee injury, and that Claimant had remained at maximum medical improvement. Dr. Noall also raised a concern over Claimant's possible alcohol abuse. CX 19 at 58.

On September 26, 1988, Claimant saw Dr. Stefan D. Tarlow, an orthopedic surgeon, for a second opinion about his knees. Dr. Tarlow examined Claimant and suggested, among other recommendations, that Claimant return to his previous job as a boilermaker to determine if Claimant could tolerate the work. CX 19 at 58.

On October 28, 1988, Dr. Noall again saw Claimant and noted that Claimant was completely asymptomatic and had full, active motion in both knees. Dr. Noall released Claimant to full work but expected that Claimant would experience increased symptoms upon returning to work. CX 19 at 58.

The Deputy Commissioner of the U.S. Department of Labor Employment Standards Administration of the Office of Workers Compensation Program (OWCP) issued an Award of Compensation in favor of Claimant on January 18, 1989 against Employer as responsible employer. The Deputy Commissioner found that Claimant had sustained a permanent partial disability equivalent to a 15 percent loss of use (5% left leg, 10% right leg), for which he was entitled to compensation for 43.2 weeks at $277.18 per week as a result of his employment with Northwest Marine Iron Works. CX 9; CX 19 at 58; EX 19 at 28.

On December 8, 1989, Claimant saw Dr. Noall and reported working full time in the shipyards with occasional, but transient symptoms in the patellar area. Dr. Noall did not make any recommendations but gave Claimant knee sleeves. CX 19 at 58; EX 21 at 32.

Claimant had no treatment of his lower extremities from the date of the last visit to Dr. Noall in December 1989 until May 2000, when Claimant suffered a burn from paint chips to his right leg (hereinafter referred to as the "slag burn"). In the interim period, Claimant continued to work full time occasionally using knee supports. Claimant stated that he could do full activities both on the job and off the job during this interim period with no difficulties from his knees. CX 19 at 58; EX 22 at 33; EX 44 at 79, 86.

In May 2000, Claimant suffered a right thigh slag burn approximately 3-4 inches above his knee while Claimant was working in a tank. There was no indication that Claimant had any acute injury to his right knee and he did not immediately report it to Employer2 as he considered it a "little burn" and thought it would go away. He continued working after that incident without knee problems until an infection at the slag burn part of his right leg caused Claimant to seek emergency care on or about June 10, 2000. Claimant first reported his slag burn injury to Employer on June 10, 2000. CX 12; CX 19 at 58; EX 23 at 35.

On June 28, 2000, Employer2, Cascade General, accepted the temporary total disability claim and paid compensation to Claimant beginning June 13, 2000. CX 19 at 59.

There was no indication of any primary knee problem at that time, and once Claimant's infection had resolved, he was released to his regular work as a boilermaker on July 12, 2000. On December 4, 2000, Claimant was rehired and returned to work at Employer2. Claimant continued to work as a boilermaker with Employer2 until January 10, 2001, when he was laid off. Claimant reported that he had increasing problems with his right knee upon returning to work in July 2000, to the point that he first returned to see Dr. Noall on December 6, 2000. CX 19 at 59.

At the December 6, 2000 visit to Dr. Noall, Claimant complained of right knee pain on an eight out of ten basis but demonstrated a full range of motion. Dr. Noall examined Claimant and reported a soft tissue mass in the anterior lateral aspect of Claimant's knee which Dr. Noall believed could be scarring from the 1987 lateral release. Dr. Noall recommended an MRI for Claimant's right knee, and Claimant was released to regular work at that time. CX 19 at 59.

An MRI performed on January 8, 2001 revealed some scar tissue in Claimant's vastus medialis but there was no evidence of increased scarring in the area of the lateral retinacular release. On that same day, Dr. Robina Wong of the Legacy Clinics issued a work release on Claimant's behalf restricting him to minimum walking with no climbing/steps until further notice. CX 19 at 59-60.

On January 15, 2001, Dr. Noall examined the right knee and could not feel a mass. Claimant was laid-off from work so he was not working on a work release at that time. Dr. Noall opined that there was probably some old scar tissue laterally, and noted that there was no other treatment recommended at that point yet found Claimant not medically stationary. Dr. Noall, however, released Claimant to his regular work at that time. CX 19 at 60.

On March 1, 2001, Dr. Noall prepared a chart note with respect to Claimant's right knee complaints and indicated that Claimant's orthopedic problems at that time were not related to the 2000 slag burn which Claimant sustained in late spring 2000. Dr. Noall stated that Claimant's right knee orthopedic problem was only temporarily related to the 2000 slag burn as it was possible that a period of deconditioning related to the burn had caused Claimant to be symptomatic. Dr. Noall diagnosed Claimant with anterolateral right knee pain, probably due to scar tissue formation, which seemed to be resolving. At this time, Dr. Noall changed his January 15 position with respect to Claimant's ability to go back to work and released Claimant to light duty work with minimal walking, minimal climbing, and no squatting or kneeling. CX 11 at 19-20; CX 19 at 60.

On March 19, 2001, Claimant, working light duty at the time, saw Dr. Lisa Alberts, an internal medicine physician at Legacy Clinics Northeast. Claimant reported right lateral knee pain and swelling, and upon examination Dr. Alberts assessed him with right knee pain and presumptive scar tissue formation at diagnosis. CX 19 at 60.

Claimant underwent an independent medical evaluation ("IME") on May 8, 2001, with both Stephen Fuller, M.D., an orthopedic surgeon, and Gerald R. Reimer, M.D., a neurologist. Dr. Fuller indicated that Claimant had ongoing right knee pain, and measured each of Claimant's quadriceps, which were found to be equal in circumference at 17 inches. Dr. Fuller opined that Claimant had 1) a mild lateral scar formation – residuals of lateral retinacular release; 2) burn of the anterior thigh with cellulites, which was fully recovered; and 3) transient atrophy of the right quadriceps, which was documented in a February 2001 physical therapy note, but this had also recovered. Both doctors believed that the Claimant's residuals at the time of the remote retinacular release explained the tenderness in the lateral supratellar area and that there was no new pathology and no atrophy as of May 8, 2001. CX 12 at 27. Dr. Fuller opined that Claimant's habit at that time of taking ten Vicodin a day was an abusive amount of medication, and that there were no residuals from the slag burn incident. Both doctors opined that Claimant could return to full duty work as a boilermaker. CX 12 at 21-29; CX 19 at 60; EX 47 at 118.

On May 18, 2001, Employer2 controverted Claimant's alleged disability, stating that any residual effects from Claimant's June 9, 2000 slag burn injury had resolved and that Claimant's lower extremity condition had returned to pre-injury status without impairment. As a result, Employer2's final payment was made on May 18, 2001 and notice was provided to Claimant by way of U.S. Dept. of Labor Form LS-208 on September 17, 2001. CX 19 at 61; EX 35 at 53.

Dr. Noall received a copy of the May 8, 2001 IME report of Drs. Fuller and Reimer, and was asked whether he concurred with their findings or alternatively to provide a narrative report which would detail why he did not concur. On May 24, 2001, Dr. Noall responded simply: "[w]hen last seen, he [Claimant] had work restrictions." CX 19 at 61.

On July 30, 2001, Claimant saw Dr. Robina Wong at Legacy Clinic for leg pain and sought a release from Dr. Wong to perform light duty work. Dr. Wong was undecided as to whether Claimant's right leg pain was caused by the slag burn and infection or may have been caused by Claimant's 1987 patellar release surgery as reflected in MRI findings. Dr. Wong issued Claimant a slip (letter) for light duty. CX 19 at 61.

There was no light duty work available for Claimant as of August 17, 2001 when he saw Dr. Wong and reported that the physical therapy was helping his leg pain. Dr. Wong observed Claimant's right knee swelling at that time. CX 19 at 61.

On August 30, 2001, Claimant, his attorney, Employer2, Employer2's counsel, Employer2's Carrier's representative, and the deputy commissioner of the OWCP met for an informal conference to discuss the status of Claimant's disability claim. Following this conference, on September 7, 2001, the OWCP Claims Examiner/Mediator, relying on reports from Drs. Noall, Fuller, and Albert, found that Claimant had reached maximum medical improvement (MMI) with no impairment to his right knee related to the slag burn incident. The Claims Examiner/Mediator also concluded that Claimant had not met his burden of proof of showing that his work restrictions at that time related to the June 9, 2000 thigh slag burn. CX 19 at 61-62.

On September 18, 2001, Claimant saw Dr. Wong again and reported continued improvement with decreased right leg pain. Claimant was no longer taking Vicodin and was able to walk 2 blocks with the assistance of a protonic leg brace. CX 19 at 62.

On October 16, 2001, Dr. Noall prepared a letter to Claimant's attorney iterating his finding that Claimant's sole diagnosis was knee pain. Dr. Noall opined that there was no objective findings relating to the slag burn injury, nor was there any indication that Claimant's knee pain was related to Claimant's 1986 right knee injury. Dr. Noall doubted Claimant's ability to return to work as a boilermaker. CX 19 at 62.

Claimant had sought payment of medical benefits from Employer in relation to his January 1986 injury. ALJX 2 at 3. Employer issued a Notice of Controversion on November 6, 2001 alleging that Claimant's then present knee condition was unrelated to his January 1986 injury. EX 37 at 55.

On February 20, 2002, Claimant underwent an IME selected by Employer with Jon C. Vessely, M.D., an orthopedic surgeon. Dr. Vessely reported Claimant's medical history, subjective complaints, and the results of his physical examination. Dr. Vessely opined that Claimant had ongoing right knee pain, without evidence of objective findings to substantiate the eight of ten degrees of pain, and with a disability out of proportion to the objective findings. In addition, Dr, Vessely found Claimant to be status post surgery, bilateral knees, including diagnosis of mild chondromalacia of the patella bilaterally, and status post lateral retinacular release bilaterally from surgeries performed in 1986 and 1987. He further opined that Claimant's work as a boilermaker with Employer did not accelerate or hasten his preexisting chondromalacia in his right knee. CX 19 at 62; EX 38 at 56-65.

Dr. Vessely further diagnosed Claimant with a history of acute burn, anterior right thigh, with secondary cellulites in June 2000, recovered. Dr. Vessely found no atrophy of Claimant's right thigh measuring Claimant's quadriceps and found them to be 16.5 inches in circumference as to the right thigh, three inches above the patella, and 16 and 3/8 inches for the left thigh at a similar location. Dr. Vessely was unable to establish that there has been, objectively, any pathological aggravation of his knee from any of his work activities or from the 2000 slag burn incident. CX 19 at 62; EX 38 at 56-65.

Dr. Vessely also noted that at the time of the February 2002 examination, Claimant continued to take Vicodin, which he apparently obtained from his girlfriend. Claimant also stated that he continued to smoke one to two packages of cigarettes a day, and admitted to overusing alcohol to a significant degree to control pain, drinking as much as a fifth of whiskey approximately every other to every third night. Dr. Vessely described Claimant as a man abusing medication, alcohol, and cigarettes with a very addictive type personality whose motivation had always been suspect. In addition, Dr. Vessely noted that Claimant's hands were callused and dirty, showing quite a bit of use with scrapes and scars. Claimant explained that he rebuilt carburetors for his friends to make some money. CX 19 at 62-63; EX 38 at 64.

On August 29, 2002, Claimant saw Dr. Noall as a follow-up to his right knee pain. Claimant reported a desire to return to unrestricted full-time work and indicated his overall condition had improved such that his right knee pain was intermittent and rated from 0 to a 9 on a scale of 10. Dr. Noall examined Claimant and opined that Claimant had anteriolateral right knee pain probably due to scar tissue formation which seemed to be resolving and was status post bilateral lateral releases with right knee pain onset of August 2000. He further opined that Claimant was medically stationary and released Claimant to full duty work with no restrictions. CX 13 at 29; CX 19 at 63.

Since Employer2 would not hire him, Claimant began work for MarCom sometime after August 29, 2002. CX 19 at 64. Claimant later told an examining IME, Dr. Schilperoort, that after his work with Employer2, he continued to work irregularly with other employers, including MarCom, Peerless, and Columbia Metal Fabricating, last having worked at Peerless three weeks before Dr. Schilperoort's August 18, 2003 examination. CX 18 at 44.

An MRI dated December 10, 2002 of Claimant's right knee revealed a possible prepatellar swelling, as interpreted by Dr. Roman-Goldstein. That same day, on December 10, 2002, Claimant saw Dr. Bertram Berney as a new patient and reported pain in his right leg. Dr. Berney examined Claimant and assessed mild pain in Claimant's right knee with mild crepitus. CX 14 at 30; CX 19 at 64.

Dr. Noall performed a follow-up examination of Claimant on December 18, 2002. Claimant's chief complaint was that in the week prior his right knee "popped out of the socket." Claimant told Dr. Noall that since his August 2002 visit, Claimant had worked for MarCom Ship Repair but was laid off two to three weeks before the December 2002 visit. Claimant described his knee condition as still somewhat painful and Dr. Noall found Claimant's right knee to be swollen with no subpatellar granting, and with slight tenderness superlateral. Dr. Noall diagnosed Claimant with recurrent right lateral knee pain, onset August 2000 with recurrence in August 2002. Dr. Noall reiterated that Claimant's anterolateral right knee pain was probably due to scar tissue formation post bilateral lateral releases. He referred Claimant for an MRI of his right knee and found him not to be medically stationary, and accordingly restricted Claimant's work to limited duty with minimal walking or use of the right leg. CX 19 at 64.

On February 4, 2003, Dr. Noall testified that Claimant's 2000 slag burn failed to cause any lasting or had any lasting sequela or effect relating to Claimant's right knee. In his opinion, as to Claimant's right knee limitations or need for treatment as of February 4, 2003, there was no causal nexus between the 2000 slag burn and any limitations or need for treatment at that time. Dr. Noall further testified that the primary cause of Claimant's right knee problem was the lateral release Claimant underwent many years ago and that Claimant may have had some scar tissue residual from that release. Dr. Noall concluded that Claimant's right knee condition beginning March 1, 2001 and forward was not related at all to the 2000 slag burn. CX 17 at 34-41; CX 19 at 64.

At his February 7, 2003 deposition, Claimant testified that after the late May 2000 slag burn accident, Claimant had returned to maritime work with employers MarCom and Columbia

Metal Works. Claimant further testified that while working for MarCom and Columbia Metal Works, he felt soreness in his knees after performing on ladders and stairs. CX 19 at 64-65.

An MRI of Claimant's right knee dated March 12, 2003 as interpreted by Dr. Roman-Goldstein revealed a small joint effusion and an abnormal signal in the posterior horn of the medial meniscus that did not intersect a free surface and was likely degenerative. There were no other meniscal, bone, or ligament abnormalities to Claimant's right knee at that time. CX 15 at 31; CX 19 at 65.

On April 15, 2003, Claimant saw Dr. Berney again, complaining of right knee pain. Dr. Berney noted a tender spot over the medial aspect of Claimant's right knee, more anterior than posterior. There was a full range of motion and valgus and varus stress failed to reveal pain in the affected joint. The Lachman test also was negative. Dr. Berney diagnosed Claimant with effusion or bursitis and opined that a steroid injection of the affected areas as well as possible aspiration would be beneficial both from a therapeutic as well as diagnostic standpoint. On May 28, 2003, Dr. Berney administered a steroid injection into Claimant's right knee and noted post patellar fibrotic scar tissue was present, resulting in Dr. Berney being unable to administer the injection medially at the swell area. CX 16 at 32-33; CX 19 at 65.

A "check the box" correspondence dated June 19, 2003 and authored by Claimant's counsel, George J. Wall, Esq., was submitted to, and later completed and returned by Dr. Noall on June 20, 2003. According to the correspondence, Dr. Noall was asked whether in his opinion "lack of use of his [Claimant's] right leg while recovering from his slag burned [sic] caused weakness and atrophy which combined with his pre-existing chondromalacia to cause his symptoms. The effects of his 6/9/00 slag burn accelerated the progression of his pre-existing chondromalacia, and his disability and need for treatment between your [Dr. Noall's] examinations of 12/6/00 and 8/29/02 were caused by a combination of his 1986 knee injury and his slag burn of 6/9/00." Dr. Noall checked "I agree" to this statement. CX 19 at 65; EX 42 at 69-71.

On June 26, 2003, I denied, as untimely, Claimant's motion to join Employer in the case against Employer2 set for hearing on July 21, 2003. EX 43 at 72-73.

On July 21, 2003, the parties and witnesses appeared and the hearing leading to the Grenz 1 Decision went forward. CX 19.

On August 18, 2003, Claimant underwent an IME with Steven J. Schilperoort, M. D., an orthopedic surgeon retained by Employer. Claimant's chief complaint was pain, and identified a lump along the superior lateral parapatellar region of his right knee. Dr. Schilperoort opined that there was no physical finding present in Claimant's medical records to support any of his stated levels of pain, and Dr. Schilperoort also concluded that there have not been any such objective evidence finding since at least August 2000. CX 18 at 42-51; CX 19 at 65.

Dr. Schilperoort diagnosed Claimant with: 1) symptomatic chondromalacia patella, left knee, status post arthroscopic lateral retinacular release, 09/10/86, resolved; 2) chondromalacia patella, right knee, status post arthroscopic lateral retinacular release, 07/14/87, resolved; 3) persistent chondromalacia patella, both knees; 4) serious right leg multi-organism infection associated with on-the-job injury episode, 06/09/00, resolved; 5) post-operative minor residual scarring, superior lateral aspect, right knee, secondary to #2; and 6) markedly excessive somatic focus and disproportionate levels of pain to valid objective findings, with moderate level functional interference with the physical examination. CX 18 at 48; CX 19 at 65-66. Dr. Schilperoort found that Claimant's infection from the 2000 slag burn had cleared with no residual impingement of function, and on this basis opined that Claimant was capable of full, regular, unlimited-duty work without restriction. Moreover, Dr. Schilperoort found that Claimant's chondromalacia patella did not combine with the effects of the infection to create a combined condition, and given the valid objective findings, Claimant had a normal examination and was not limited in his work capabilities. CX 18 at 50; CX 19 at 65-66.

Dr. Schilperoort also noted that in general, the quadriceps mechanism is immensely sensitive to any true pain and discomfort occurring within the knee, and will atrophy very quickly in response to pain and relative disuse. He noted that it was most telling that Claimant's quadriceps muscle size measured the same on examination. He also noted that while Dr. Noall's treatment notes from December 2000 through August 2002 make no reference to quadriceps muscle size measurements or any other objective evidence of atrophy to Claimant's quadriceps, the May 2001 IME indicated that Claimant's quadriceps were equal in size, right versus left. In addition, Dr. Vessely's February 20, 2002 examination of Claimant revealed that Claimant's affected right side was in fact slightly larger than the contralateral left side, which exhibited no evidence of quadriceps atrophy. CX 18 at 48-49; CX 19 at 66. Dr. Schilperoort concluded that though Dr. Noall had identified that atrophy was apparently present secondary to Claimant's slag burn, Dr. Noall was unable to corroborate that atrophy was present, and there appeared to be evidence from the imaging study on December 6, 2000, and two IME's on May 8, 2001, and February 20, 2002, that no quadriceps atrophy was present. Moreover, Dr. Schilperoort opined that Claimant's persistent pain could not be verified on the basis that there was no ability to combine his pre-existing chondromalacia with the slag burn. CX 18 at 49-50; CX 19 at 66.

Finally, Dr. Schilperoot concluded by opining that he agreed with Dr. Noall "that the 'lump' that he feels in the superior lateral aspect of the [Claimant's right] knee does not appear to have been associated with the infection of 06/09/00, and there is a relatively common finding left over from lateral retinacular releases, especially when performed arthroscopically." CX 18 at 50. In fact, Dr. Schilperoor added that any valid symptoms would be based solely on the chondromalacic changes rather than the slag burn infection to Claimant right leg. *Id.*

According to Claimant's testimony at the hearing in July 2003, he continued to experience pain in his right leg, located underneath the right side of his kneecap about three inches away from where he suffered the May 2000 slag burn. CX 19 at 66; EX 44 at 80-81. Claimant later testified that there is a lump on his right leg where the slag burn infection was that get hard, hurts, and makes his knee throb. EX 44 at 81-82. He further testified, however, that at the time of the July 2003 hearing, Claimant no longer had any pain at the site of the slag burn on his right thigh. EX 44 at 92. He also testified that in the years 2001-2003, he continued to perform automotive tune-up work for his friends either for cash or barter and that he does not report this income to the Internal Revenue Service. *Id*.

Another "check the box" correspondence dated October 24, 2003, this time authored by Employer's counsel, Jill B. Gragg, was submitted to, and later completed and returned by Dr. Vessely on October 29, 2003. EX 46 at 100-101. According to the correspondence, Dr. Vessely was provided additional medical reports concerning Claimant's right knee complaints and was asked to respond to 7 statements prepared by Employer's legal counsel. Id. These included "2. You felt based on your exam and review of the records that the chondromalacia in Mr. Grenz' knees was not severe, and there are no findings which would indicate that the chondromalacia has progressed to cause any of the recent treatment. 3. You base this opinion on the fact that Mr. Grenz has no objective findings relating to chondromalacia such as edema or synovitus. 4. If Mr. Grenz' need for treatment was related to his 1986 injury, you would expect to see atrophy, consistent crepitous, synovitus, and valid decreased range of motion. All that Mr. Grenz complained of was pain in the knee, and the examinations do not show any symptoms consistent with chondromalacia. 5. The miniscal findings on the MRI in March 2003 are unrelated to the 1986 injury. 6. There is no connection between Mr. Grenz' knee complaints, or the need for medical services related to those complaints, after his June 2000 injury, to Mr. Grenz' 1986 occupational injury or the sequela of that injury. Dr. Vessely checked "I agree" to these statements. Id.

Dr. Vessely was deposed on January 21, 2004, and testified that he had noted "… a slight decreased range of motion… related to pain he was relating", and " some minimal retro patellar crepitation, which would be consistent with his prior problem.: EX 47 at 108. Dr. Vessely further testified that the crouching, kneeling, and crawling associated with Claimant's activities as a shipyard welder could have caused his chondromalacia, and that continued work activities of that nature could cause his chondromalacia to progress. EX 47 at 112-113. Dr. Vessely concluded, however, that Claimant's knee problems were not related to his 1986 work-related injury and that there was no objective evidence showing that Claimant's chondromalacia had progressed from 1986 to 2003. EX 47 at 113-114. Dr. Vessely concluded his testimony by opining that he did not believe either incident involving Claimant's right knee - the 1986 injury/1987 release surgery or the 2000 slag burn – were responsible for medical treatment to Claimant's right knee after May of 2001. EX 47 at 117.

Dr. Vessely further testified that his objective finding from the February 2002 examination of Claimant were basically normal with no swelling, no synovitis, normal tracking of the patella, and a normal ligament exam. He further explained that if chondromalacia were the cause of Claimant's knee complaints, Dr. Vessely would expect to see irritation upon patella examination, synovitis, swelling, apprehension with patellar motion, patellar tenderness, and decreased muscle size, none of which were present on exam. This led Dr. Vassely to opine that the need for medical treatment in relation to the right knee was not related to the chodromalacia or the 1986 injury. EX 47 at 108-110.

CONCLUSIONS OF LAW

Claimant's Claim Is Limited to Medical Benefits from May 19,2001 Forward

The parties have stipulated that Claimant seeks only continuing medical benefits from May 19, 2001 forward in this claim for benefits under the Act. ALJX 1 at 5; ALJX 2 at 2 and 5.

Moreover, Claimant's failure to request modification of the 1989 Compensation Order within one year of its issuance bars him from any benefits in this claim except for medical benefits, as a claim for medical benefits is never time-barred. *Colburn v. General Dynamics Corp.*, 21 BRBS 219, 222 (1988).

FROM MAY 19, 2001 THROUGH AUGUST 29, 2002, THERE WAS A CAUSAL RELATIONSHIP BETWEEN CLAIMANT'S PRIOR RIGHT KNEE CHONDROMALACIA AND THE RIGHT KNEE PAIN CONDITION

Credibility

Claimant's testimony at hearing in July 2003 and his degree of right knee pain reported to his physicians after August 29, 2002 through at least 2003 were not credible. Several examining physicians opined that Claimant's reported pain level was not substantiated by objective evidence. CX 18 at 48; CX 19 at 62-66; EX 47 at 119.

Claimant's testimony is inconsistent and contradicted by other evidence in the record in my Grenz 1 Decision. See CX 19 at 66-67. Moreover, having had the opportunity to observe the demeanor of Claimant at the first hearing involving Claimant in July 2003, I found other witnesses more credible on the issue of whether Claimant contacted Employer during the relevant time period. *Id*. Accordingly, I reject Claimant's testimony as unreliable.

In addition, Claimant's July 2003 testimony was inconsistent and not credible as to the location of the pain in his right leg. CX 19 at 67. At times he claimed that the pain was debilitating at the location of the May 2000 slag burn while elsewhere he either stated he had no pain or its location was a distance away from where he suffered a slag burn. CX 19 at 67.

Finally, Claimant's lack of credibility is reflected in the record indicating his heavy drug and alcohol use while Claimant continued his work at home as a mechanic earning unreported income. For example, Dr. Marble found Claimant to be unreliable and elected to discontinue caring for him in 1986. Dr. Noall was concerned of Claimant's possible alcohol abuse in 1988, Dr. Fuller opined that Claimant's habit of taking ten Vicodin tablets a day was an abusive amount of medication in 2001, Claimant himself admitted to overusing alcohol to a significant degree to control pain by drinking a fifth of whiskey approximately every third night in 2002, and Dr. Vessely found Claimant to be influenced by medication, alcohol and cigarettes with a very addictive type personality whose motivation had always been suspect. Despite his apparent heavy drug and alcohol use, Claimant continued to perform automotive tune-up work for his friends either for cash or barter without reporting this income to the Internal Revenue Service. CX 19 at 67.

Based on the foregoing inconsistencies and contradictions in Claimant's testimony and behavior, I find that he was not a credible witness and accord little weight to his testimony concerning his right knee pain particularly after August 29, 2002.

Similarly, I find Dr. Noall's June 20, 2003 "check-the-box" letter response to be unreliable as it contradicts years of prior testimony, treatment notes and medical reports from other physicians that consistently concluded that Claimant's right knee problems on or after May 18, 2001 were unrelated to his May 2000 slag burn. CX 12 at 21-29; CX 13 at 29; CX 17 at 34-41; CX 18 at 42-51; CX 19 at 59-65; EX 47 at 118. For these reasons, Dr. Noall's responses to the June 2003 "check-the-box" letter are rejected entirely as they are unsupported by objective medical evidence and established scientific research applicable to the facts of this case.

Furthermore, the notes of Claimant's right knee swelling in March and August 2001, contradict Dr. Vessely's opinion that there is no objective evidence or symptoms compatible with chondromalacia such as swelling or synovitis. As a result, I reject Employer IME Dr. Vessely's opinions as to Claimant's knee condition from May 19, 2001 through August 29, 2002 as his opinions are either contradicted by the more knowledgeable treating physicians or simply outweighed by the other consistent opinion.

With the foregoing determinations in mind, I turn to the remaining issues in this case, namely, whether there is any causal relationship between Claimant's right knee condition after May 18, 2001 and his employment with Employer.

Causation

Claimant contends that his right knee condition and related impairments were caused, accelerated, or aggravated by the cumulative trauma he incurred while performing his job at Employer as a result of his work-related 1986 right knee injury and related 1987 release surgery. In contrast, Employer asserts that there are inadequate factual and medical bases for concluding that Claimant's 1986 right knee injury and related release surgery established or raised any sort of causal relationship to his right knee condition from May 19, 2001 though the present.

The Section 20(a) Presumption Has Not Been Invoked

In determining whether an injury is work-related, Claimant is aided by the Section 20(a) presumption, which may be invoked only after he establishes a *prima facie* case, *i.e.*, the claimant demonstrates that he suffered harm and that the conditions existed at work which could have caused that harm. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59(CRT) (5th Cir. 1998); *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981).

In the instant case, Claimant establishes a causal connection between his 1989 chondromalacia surgery and his expressed right knee pain from May 19, 2001 and thereafter based on the evidence presented. Specifically, Claimant was treated for right knee pain during the period at issue here. A Claimant's credible complaints of pain alone may be enough to meet the burden of establishing disability. *See Anderson v. Todd Shipyards Corp.*, 22 BRBS 20, 21 (1989). In addition, Claimant's treating physician, Dr. Noall reported a soft tissue mass in Claimant's right knee which Dr. Noall believed could be scarring from the 1986 injury and 1987 release surgery in response to Claimant's pain complaints in December 2000. CX 19 at 59. Furthermore, Dr. Noall opined in January 2001 that Claimant probably had old scar tissue laterally in his right knee and confirmed this opinion in a March 1, 2001 examination of Claimant wherein he diagnosed Claimant as having anterolateral right knee pain, probably due to scar tissue formation. CX 11 at 19-20; CX 19 at 60. Also in December 2002 after Claimant returned to work with other employers, Dr. Noall examined Claimant and opined that Claimant's anterolateral right knee pain was probably due to scar tissue formation post bilateral releases. CX 19 at 64. Finally, at his deposition on February 3, 2003, Dr. Noall testified that the primary cause of Claimant's right knee problem was the lateral release that Claimant underwent in 1987 and the related scar tissue residue from that release. CX 17 at 34-41; CX 19 at 64.

As a result, I find that Claimant has invoked the Section 20(a) presumption here as credible evidence has been presented to establish a causal relationship between Claimant's 1986 right knee injury and related release surgery and his right knee pain after May 18, 2001.

Employer Has Rebutted the Section 20 (a) Presumption

Once the claimant establishes a *prima facie* case, Section 20(a) applies to relate the injury to the employment, and the employer can rebut this presumption by producing substantial evidence that the injury or harm is not related to the employment. *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22 (CRT) (11th Cir. 1990) (emphasis added)*; O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000); *see also American Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71 (CRT) (7th Cir. 1999) (*en banc*), *cert. denied*, 120 S.Ct. 1239 (2000); *Gooden*, 135 F.3d 1066, 32 BRBS 59 (CRT). If the employer rebuts the presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119 (CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT) (1994).

In order to rebut the Section 20(a) presumption, an employer must present substantial evidence that severs the causal nexus. *American Grain Trimmers*, 181 F.3d 810, 33 BRBS 71(CRT); *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 4 BRBS 466 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976). The Fifth Circuit has held that an employer need not "rule out" the employment as a cause; instead, an employer must produce substantial evidence that employment is not the cause. *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187 (CRT) (5th Cir. 1999). Under this standard, it is sufficient if a physician unequivocally states, to a reasonable degree of medical certainty, that the harm is not related to the employment. *O'Kelley*, 34 BRBS at 41-42. An employer need not establish another agency of causation to rebut the Section 20(a) presumption. *Id.* at 41; *see Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982) (Kalaris, J., concurring and dissenting), *aff'd mem.*, 722 F.2d 747 (9th Cir. 1983), *cert. denied*, 467 U.S. 1243 (1984).

Employer has rebutted the Section 20(a) presumption with Dr. Vessely's opinion that there is no causal relationship between Claimant preexisting chondromalacia and his right knee pain condition after May 18, 2001 through August 29, 2002. EX 38; EX 47 at 108-110. Furthermore, the Section 20(a) presumption is also rebutted by opinions from several physicians for the period of August 30, 2002 to the present including Drs. Noall, Vessely, and Schilperoot as well as Claimant himself. CX 13 at 29; CX 17 at 34-41; CX 18; CX 19 at 63; EX 38; and EX 47 at 108-110. These opinions provide substantial evidence that symptoms from Claimant's 1986 right knee injury and related 1987 release surgery had materially resolved by August 29, 2002 such that Claimant could return to his prior work unrestricted by any preexisting work-related injury. Claimant did return to work around that time.

After Weighing the Evidence, Claimant has proven that from May 19, 2001 through August 29, 2002, He Is Entitled to Medical Benefits Under Section 7 of the Act But He Has Failed to Establish That His Right Knee Condition After August 29, 2002, Arose or Became Aggravated Out of His Employment With Employer Northwest Marine Iron Works

Entitlement to Medical Expenses and Costs

Section 7(a) of the Act provides in relevant part that the "Employer shall furnish medical, surgical, and other attendance or treatment […] for such period as the nature of the injury or the process of recovery may require." 33 O.K. § 907(a). In order for medical expenses to be assessed against an employer, the expense must be both reasonable and necessary. *Pernell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979). Reasonable and necessary medical expenses are those related to and appropriate for the diagnosis and treatment of the industrial injury. 20 C.F.R. § 702.402; *Pardee v. Army & Air Force Exchange Serv.*, 13 BRBS 1130, 1138 (1981). A claimant establishes a prima facie case for compensable medical treatment where a qualified physician indicates treatment was necessary for a work-related condition. *Turner v. Chesapeake & Potomac Tel. Co.*, 16 BRBS 255, 257-58 (1984). Claimant carries the burden to establish the necessity of such treatment rendered for his work-related injury. See generally Schoen v. U.S. Chamber of Commerce, 30 BRBS 112 (1996); *Wheeler v. Interocean Stevedoring Inc.*, 21 BRBS 33 (1988).

May 19, 2001 through August 29, 2002

If the administrative law judge finds that the Section 20(a) presumption is rebutted, the judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 270 (1990).

In my prior Grenz 1 Decision, I found no causal connection between Claimant's May 2000 right thigh slag burn injury and his right knee pain from May 19, 2004 to the present based primarily on treating physician Dr. Noall's medical opinions. See CX 11 at 19-20; CX 19 at 60. A treating physician's opinion is entitled to special weight because he is employed to cure and has a greater opportunity to know and observe the patient as an individual. *Amos v. Director, OWCP,* 153 F.3d 1051, 1054 (9th Cir. 1998), amended, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999). Dr. Noall performed the lateral retinacular release surgery on Claimant's right knee in 1987. No other physician of record treated Claimant for as lengthy a time as Dr. Noall. Therefore, his determination is accorded greater weight.

In this case, Dr Noall also reported a soft tissue mass in Claimant's right knee which Dr. Noall believed could be scarring from the 1986 injury and 1987 release surgery in response to Claimant's pain complaints in December 2000. CX 19 at 59. Furthermore, Dr. Noall opined in January 2001 that Claimant probably had old scar tissue laterally in his right knee and confirmed this opinion in a March 1, 2001 examination of Claimant wherein he diagnosed Claimant as having anterolateral right knee pain, probably due to scar tissue formation. CX 11 at 19-20; CX 19 at 60. Also in December 2002 after Claimant returned to work with other employers, Dr.

Noall examined Claimant and opined that Claimant's anterolateral right knee pain was probably due to scar tissue formation post bilateral releases. CX 19 at 64. Finally, at his deposition on February 3, 2003, Dr. Noall testified that the primary cause of Claimant's right knee problem was the lateral release that Claimant underwent in 1987 and the related scar tissue residue from that release. CX 17 at 34-41; CX 19 at 64.

For the same reasons as in my Grenz 1 Decision, here I reject Dr. Noall's June 20, 2003 letter response. See CX 19 at 14 and 17. Dr. Noall and Drs. Fuller, Vessely and Schilperoort, each opined that either Claimant's right knee condition after May 18, 2001, was <u>not</u> caused or aggravated by his May 2000 work-related slag burn or that it was "very unlikely" that Claimant would have anything else accounting for his right knee problem *other than scar tissue related to his 1986 right knee injury and related release surgery in 1987*

Consistent with Dr. Noall's opinions referenced above are the opinions of Drs. Fuller and Reimer after examination of Claimant on May 8, 2001. At that time, they both opined that Claimant's residuals at the time of the remote retinacular release explained the tenderness in the lateral supatellar area of Claimant's right knee and that there were no residuals from the slag burn incident. CX 12 at 21-29, CX 19 at 60; EX 47 at 118.

Also consistent with Dr. Noall's opinions referenced above is the fact that Dr. Lisa Alberts reported right lateral knee pain and swelling after examining Claimant on March 19, 2001. CX 19 at 60. This objective evidence of Claimant's right knee swelling along with Dr. Alberts' diagnosis of right knee pain and presumptive scar tissue formation is consistent with Dr. Noall's opinions. Similarly, at an August 17, 2001 examination of Claimant, Dr. Wong observed Claimant's right knee swelling. CX 19 at 61.

The notes of Claimant's right knee swelling in March and August 2001, contradict Dr. Vessely's opinion that there is no objective evidence or symptoms compatible with chondromalacia such as swelling or synovitis. As a result, I reject Dr. Vessely's opinions as to Claimant's knee condition from May 19, 2001 through August 29, 2002 as his opinions are either contradicted by the more knowledgeable treating physicians or simply outweighed by the other consistent opinions. I credit the consistent opinion testimony, medical reports and records of Drs. Noall, Fuller, Reimer, Alberts, and Wong over those of Dr. Noall in June 2003 and Employer IME Dr. Vessely, since treating physician Dr. Noall's earlier opinions are specific and comprehensive and supported by not only the opinions of Drs. Fuller, Reimer, Alberts, and Wong, but by Claimant's medical history as well.

Based on the weight of the record, I find that there is a causal relationship between Claimant's earlier chondromalacia surgery and the related residual scarring, and his right knee pain. In the absence of any credible countervailing evidence, I find that Claimant is entitled to reimbursement for all medical treatment associated with his right knee condition from May 19, 2001 through August 29, 2002, as defined in Section 7, incurred as a result of his work-related injury.

August 30, 2002 to the Present

On August 29, 2002, Claimant saw Dr. Noall and reported a desire to return to unrestricted full-time work. CX 13 at 29. Dr. Noall examined Claimant and opined that Claimant was status post bilateral lateral releases with right knee pain onset of August 2000. He further opined that Claimant was medically stationary and released Claimant to full duty work with no restrictions. CX 13 at 29; CX 19 at 63.

Claimant began work for MarCom sometime after August 29, 2002. CX 19 at 64. Claimant told Dr. Noall that since his August 2002 visit, he had worked for Marcom Ship Repair but was laid off two to three weeks before his December 18, 2002 visit to Dr. Noall. CX 19 at 64. Claimant later told Dr. Schilperoort, that after his work with Employer2, he continued to work irregularly with other employers, including Marcom, Peerless, and Columbia Metal Fabricating, last having worked at Peerless three weeks before Dr. Schilperoort's August 18, 2003 examination. CX 18 at 44. At his February 7, 2003 deposition, Claimant testified that subsequent to his work at Employer2, Claimant had returned to maritime work with employers MarCom and Columbia Metal Fabricating. Claimant further testified that while working for MarCom and Columbia Metal Fabricating, he felt soreness in his knees after performing on ladders and stairs. CX 19 at 64-65.

Based on these facts and the opinions of Drs. Noall, Vessely, and Schilperoort, I conclude that Claimant reached a state of maximum medical improvement with respect to his progressed 1986 chondromalacia right knee injury and could return to work without restrictions which, in fact, he did with respect to his post-August 2002 work with MarCom, Columbia Metal Fabricators and Peerless. CX 13 at 29; CX 18 at 42-51; CX 19 at 63; EX 47 at 113-117. As a result, I find that Claimant's progressed chondromalacia injury from 1986 was fully resolved as of August 29, 2002 and Claimant's lower extremity condition had returned to pre-injury status without impairment.

Alternatively, I conclude that working conditions for Claimant at MarCom or Columbia Metal Fabricators after August 29, 2002, could have aggravated or contributed to his right knee pain flare-ups. This work involved activities such as performing on ladders and stairs similar to his work activities at Employer and Employer2. Claimant's alleged right knee pain, subsequent to Dr. Noall's August 29, 2002, full release to work without restrictions, could have been negatively impacted by his work with new employers MarCom and/or Columbia Metal Fabricators. From this evidence, I infer that the work at MarCom and Columbia Metal Fabricators was not significantly different from the work Claimant performed at Employer and Employer2, that Claimant was required to use his right knee to climb stairs and ladders in his work at MarCom and Columbia Metal Fabricators, and that this new work could have aggravated and contributed to Claimant's right knee pain flare-ups. *See Kelaita v. Director, OWCP, 799 F.2d 1308, 1312 (9th Cir. 1986).*

Based on the record as a whole, I find that no causal connection exists between Claimant's 1986 right knee injury and related 1987 release surgery, on the one hand, and his right knee condition on or after August 30, 2002, on the other.

In this case, Claimant also seeks medical benefits and compensation for his current medical expenses and costs, as well as reimbursement for outstanding bills from August 30, 2002 forward. As discussed *supra*, I found Claimant's right knee condition from August 30, 2002 forward, to be unrelated to Claimant 1986 injury and corresponding 1987 release surgery given the foregoing opinions of Drs. Noall, Fuller, Reimer, Vessely, and Schilperoot regarding the lack of causal relationship between Claimant's earlier chondromalacia surgery and his right knee pain after August 29, 2002. In the absence of any credible countervailing evidence, I find that Claimant's claim for ongoing medical benefits from August 30, 2002 to the present is denied.

ORDER

Based on the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that:

1. Employer shall provide such medical treatment from May 19, 2001 through August 29, 2002, as the nature of Claimant's work-related disability required and as described in the decision above.

2. Interest at the rate specified in 28 U.S.C. § 1961 in effect when this Decision and Order is filed with the OWCP shall be paid on all accrued benefits computed from the date each payment was originally due to be paid.

3. The District Director shall make all calculations necessary to carry out this Order.

4. Counsel for Claimant shall within 20 days after service of this Order submit a fully supported application for costs and fees to counsel for Employer and to the undersigned Administrative Law Judge. Within 20 days thereafter, counsel for Employer shall provide Claimant's counsel and the undersigned Administrative Law Judge with a written list specifically describing each and every objection to the proposed fees and costs. Within 20 days after receipt of such objections, Claimant's counsel shall verbally discuss each of the objections with counsel for Employer. If the two counsel disagree on any of the proposed fees or costs, Claimant's counsel shall within 15 days file a fully documented petition listing those fees and costs which are still in dispute and set forth a statement of Claimant's position regarding such fees and costs. Such petition shall also specifically identify those fees and costs which have not been disputed by counsel for Employer. Counsel for Employer shall have 15 days from the date of service of such application in which to respond. No reply will be permitted unless specifically authorized in advance.

IT IS SO ORDERED.

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GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California